रजिस्ट्री सं० डी० 221 REGISTERED No. D. 221

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 62] नई दिल्ली, बुधवार, नवम्बर 21, 1973/कार्तिक 30, 1895
No 62] NEW DELHI, WEDNESDAY, NOVEMBER 21, 1973/KARTIKA 30, 1895

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 21st November, 1973:—

Bill No. XXXV of 1973

A Bill further to amend the Navy Act, 1957.

BE it enacted by Parliament in the Twenty-fourth Year of the Republic of India as follows:—

1. This Act may be called the Navy (Amendment) Act, 1973. Short title.

62 of 1957.

2. Throughout the Navy Act, 1957 (hereinafter referred to as the principal Act), for the word "seaman", wherever it occurs, the word "sailor" shall be substituted, and such other consequential amendments as the rules of grammar may require shall also be made. Substitution of "seaman" by "sailor".

3. In section 3 of the principal Act,— Amendment of section 3.

(*a*) after clause (*12*), the following clause shall be inserted, namely:—

'(*12A*) "naval establishment" means an establishment belonging to, or under the control of, the Indian Navy whether within or without India;';

(*b*) for clause (*17*), the following clause shall be substituted, namely:—

'(*17*) "petty officer" means a sailor rated as such and includes a chief petty officer and a master chief petty officer;'.

4. In sub-section (*2*) of section 7 of the principal Act, after the words, brackets and figures "sub-section (*3*) of section 93", the words "or in such cases and subject to such conditions as may be prescribed" shall be inserted. Amendment of section 7.

Amendment of section 15.

5. In sub-section (2) of section 15 of the principal Act, before the word "discharge" in both the places where it occurs, the words "dismiss or" shall be inserted.

Insertion of new sections 19A and 19B.

6. In Chapter V of the principal Act, after section 19, the following sections shall be inserted, namely:—

Reinstatement of persons belonging to the Indian Naval Reserve Forces on termination of period of training or actual service with the Indian Navy.

"19A. (1) If a person belonging to the Indian Naval Reserve Forces is, during the period of his employment under an employer called up for training or called up into actual service with the Indian Navy in pursuance of his liability under any regulations made under this Act, it shall be the duty of every such employer to reinstate the person in his employment on the termination of the period of his training or service with the Indian Navy in an occupation and under conditions not less favourable to him than those which would have been applicable to him had his employment not been so interrupted:

Provided that if the employer refuses to reinstate such person or denies his liability to reinstate such person, or if for any reason reinstatement of such person is represented by the employer to be impracticable, either party may refer the matter to the authority prescribed in this behalf and that authority shall, after considering all matters which may be put before it and after making such further inquiry into the matter as may be prescribed, pass an order—

(a) exempting the employer from the provisions of this section, or

(b) requiring the employer to re-employ such person on such terms as the authority thinks suitable, or

(c) requiring the employer to pay to such person by way of compensation for failure or inability to re-employ, a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer.

(2) If any employer fails to obey the order of any such authority as is referred to in the proviso to sub-section (1), he shall be punishable with fine which may extend to one thousand rupees, and the court by which an employer is convicted under this sub-section shall order him (if he has not already been so required by the said authority) to pay to the person whom he has failed to re-employ a sum equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer, and any amount so required to be paid either by the said authority or by the court shall be recoverable as if it were a fine imposed by such court.

(3) In any proceeding under this section it shall be a defence for an employer to prove that the person formerly employed did not apply to the employer for reinstatement within a period of two months from the termination of the period of his training or service with the Indian Navy.

(4) The duty imposed by sub-section (1) upon an employer to reinstate in his employment a person such as is described in that sub-section shall attach to an employer who, before such person is actually called up for training, or called up into actual service with

the Indian Navy, terminates his employment in circumstances such as to indicate an intention to evade the duty imposed by that sub-section, and such intention shall be presumed until the contrary is proved, if the termination takes place after the issue of orders calling him up for training or service with the Indian Navy under this Act.

Preservation of service rights belonging to the Indian Naval Reserve Forces when called up for training or actual service with the Indian Navy.

19B. When any person belonging to the Indian Naval Reserve Forces and called up for training or called up into actual service with the Indian Navy in pursuance of his liability under any regulations made under this Act, has any rights under any provident fund or superannuation fund or other scheme for the benefit of employees maintained in connection with the employment he relinquishes, he shall continue, so long as he is engaged in training, or service with the Indian Navy and if he is reinstated, until such reinstatement under the provisions of this Act, to have in respect of such fund or scheme such rights as may be prescribed.".

Substitution of new sections for sections 34 to 37.

7. For sections 34 to 37 of the principal Act, the following sections shall be substituted, namely:—

Misconduct by officers or persons in command.

"34. Every flag officer, captain or other person subject to naval law who, being in command of any ship, vessel or aircraft of the Indian Navy, or any naval establishment—

(*a*) fails to use his utmost exertions to bring into action any such ship, vessel or aircraft which it is his duty to bring into action; or

(*b*) surrenders any such ship, vessel or aircraft to the enemy when it is capable of being successfully defended or destroyed; or

(*c*) fails to pursue the enemy whom it is his duty to pursue or to assist to the utmost of his ability any friend whom it is his duty to assist; or

(*d*) in the course of any action by or against the enemy improperly withdraws from the action or from his station or fails in his own person and according to his rank to encourage the persons under his command to fight courageously; or

(*e*) surrenders any such naval establishment or any part of such an establishment to the enemy when it is capable of being successfully defended or when it is his duty to cause it to be destroyed,

shall,

(*a*) if such act is committed with intent to assist the enemy or from cowardice, be punished with death or such other punishment as is hereinafter mentioned; and

(*b*) in any other case, be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned.

Misconduct by persons other than these in command.

35. Every person subject to naval law who, not being in command of any naval establishment or any ship, vessel or aircraft of the Indian Navy, fails when ordered to prepare for action by or against the enemy, or during any such action, to use his utmost exertion to carry the lawful orders of his superior officers into execution shall,—

(*a*) if such act is committed with intent to assist the enemy, be punished with death or such other punishment as is hereinafter mentioned; and

(*b*) in any other case, be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned.

Delaying or discouraging action or service commanded.

36. Every person subject to naval law who wilfully delays or discourages upon any pretext whatsoever, any action or service which has been commanded on the part of the Navy, regular Army, or Air Force or of any forces co-operating therewith shall,—

(*a*) if such act is committed with intent to assist the enemy, be punished with death or such other punishment as is hereinafter mentioned; and

(*b*) in any other case, be punished with imprisonment which may extend to seven years or such other punishment as is hereinafter mentioned.

Penalty for disobedience in action.

37. Every person subject to naval law who, being in the presence or vicinity of the enemy or having been ordered to be prepared for action by or against the enemy—

(*a*) deserts his post; or

(*b*) sleeps upon his watch,

shall be punished with death or such other punishment as is hereinafter mentioned.".

Amendment of section 41

8. In section 41 of the principal Act, for clause (*c*), the following clause shall be substituted, namely:—

"(*c*) fails to perform or negligently performs the duty imposed on him; or".

Substitution of new section for section 42.

9. For section 42 of the principal Act, the following section shall be substituted, namely:—

Mutiny defined

"42. Mutiny means any assembly or combination of two or more persons subject to naval law, the Army Act, 1950, or the Air Force Act, 1950, or between persons two at least of whom are subject to naval law or any such Act,— 46 of 1950. 45 of 1950.

(*a*) to overthrow or resist lawful authority in the Navy, regular Army or Air Force or any part of any one or more of them or any forces co-operating therewith or any part thereof; or

(*b*) to disobey such authority in such circumstances as to make the disobedience subversive of discipline or with the

object of avoiding any duty or service against, or in connection with operations against, the enemy; or

(*c*) to show contempt to such authority in such circumstances as to make such conduct subversive of discipline; or

(*d*) to impede the performance of any duty or service in the Navy, regular Army or Air Force or any part of any one or more of them or any forces co-operating therewith or any part thereof.".

Amendment of section 43.

10. In section 43 of the principal Act, in clause (*e*), after the words "to suppress", the words "or prevent" shall be inserted.

Amendment of section 51.

11. In section 51 of the principal Act, after the words "place of duty", the words "or any place where he is required to be" shall be inserted.

Amendment of section 52.

12. Section 52 of the principal Act shall be re-numbered as sub-section (*1*) thereof, and after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) For the purpose of sub-section (*1*), a person shall be deemed to be guilty of drunkenness if, owing to the influence of alcohol or any drug whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform or behaves in a disorderly manner or in a manner likely to bring discredit to the naval service.".

Amendment of section 55.

13. In sub-section (*1*) of section 55 of the principal Act, for the word "designedly", the word "wilfully" shall be substituted.

Insertion of new sections 55A, 55B, 55C and 55D.

14. After section 55 of the principal Act, the following sections shall be inserted, namely:—

Dangerous unauthorised flying.

"55A. Every person subject to naval law, who is guilty of any act or neglect in flying or in the use of any aircraft of the Indian Navy or in relation to any such aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person shall—

(*a*) if he acts wilfully or with wilful neglect, be punished with imprisonment for a term which may extend to fourteen years; and

(*b*) in any other case, be punished with imprisonment for a term which may extend to five years or such other punishment as is hereinafter mentioned.

Inaccurate certificate.

55B. Every person subject to naval law who signs any certificate in relation to an aircraft or aircraft material belonging to or in the service of the Government without ensuring the accuracy thereof, shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

Low flying and annoyance by flying.

55C. Every person subject to naval law being the pilot of an aircraft of the Indian Navy, who—

(*a*) flies it at a height less than the minimum height authorised by his commanding officer or appropriate service authority except while taking off or landing; or

(*b*) flies it so as to cause or likely to cause unnecessary annoyance to any person,

shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

Disobedience of lawful command of captain of an aircraft.

55D. Every person subject to naval law, who, while he is in an aircraft belonging to or in the use of the Government, disobeys any lawful command given by the captain of the aircraft, whether such captain is subject to naval law or not, in relation to all matters relating to flying or handling of the aircraft or affecting the safety thereof, shall be punished with imprisonment for a term which may extend to fourteen years or such other punishment as is hereinafter mentioned.".

Amendment of section 73.

15. In section 73 of the principal Act, after the words "Indian Naval Reserve Forces", the words "and every person belonging to any auxiliary forces raised under this Act" shall be inserted.

Amendment of section 94.

16. In section 94 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

"(5) The commanding officer of a training ship or the officer-in-charge of a naval academy may impose on any subordinate officer whilst under training such minor punishments, not higher than the punishment of severe reprimand or reprimand, as may from time to time, be prescribed.".

Amendment of section 168.

17. In section 168 of the principal Act,—

(*i*) to sub-section (3), the following proviso shall be added, namely:—

"Provided that the Central Government may, if it is of opinion that it is necessary or expedient so to do in the exigencies of service, relax, for reasons to be recorded in writing, the qualification specified in clause (*b*) or clause (*c*) in respect of any person.".

(*ii*) to sub-section (4), the following proviso shall be added, namely:—

"Provided that the Central Government may, if it is of opinion that it is necessary or expedient so to do in the exigencies of service, relax, for reasons to be recorded in writing, the qualification specified in clause (*b*) or clause (*c*) in respect of any person.".

Amendment of section 184.

18. In sub-section (2) of section 184 of the principal Act, for clause (*c*), the following clauses shall be substituted, namely:—

"(*c*) the cases in which, and the conditions subject to which, powers of punishment may be exercised under sub-section (2) of section 7;

(*ca*) the retirement, discharge and dismissal of persons in the naval service;

(cb) the authority to which any matter referred to in section 19A may be referred and the manner in which an enquiry may be made by that authority;".

Substitution of new section for section 185.

19. For section 185 of the principal Act, the following section shall be substituted, namely:—

Regulations to be laid before Parliament.

"185. Every regulation made under this Act, shall be laid, as soon as may be after it is made before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.".

STATEMENT OF OBJECTS AND REASONS

The Navy Act, 1957 (62 of 1957) was brought into force from the 1st of January, 1958. In the light of the experience gained in the working of the Act during the last fifteen years, certain deficiencies and shortcomings had come to light. Although the naval air arm has been a part of the Navy for quite some time, the Act does not provide for any offences relating to flying or aircraft. Similarly, there is no provision in the Act for the reinstatement of persons belonging to the Indian Naval Reserve Forces in their former employment on termination of actual service with the Navy, corresponding to that contained in the Indian Reserve Forces Act, 1884 or the Reserve and Auxiliary Air Force Act, 1952, and during the armed conflict in 1965 and 1971, the need for including a similar provision in the Act was acutely felt. Opportunity has, therefore, been taken to incorporate these provisions in the Act.

2. A new cadre of Master Chief Petty Officer was introduced in the Navy in December, 1968. This has necessitated an amendment to the definition of "petty officer" to bring Master Chief Petty Officer also within its purview. It is felt necessary to include certain new provisions which are existing in the Army and Air Force Acts and not provided for in the Navy Act such as the provision for dismissing an officer or sailor for misconduct which has led to his conviction on a criminal charge.

3. The Act prescribes the qualifications for appointment of the Judge Advocate General and Deputy Judge Advocate General in the Navy. To enable suitable and qualified service officers to be considered for these posts, a provision is being made to empower the Central Government to relax the qualification specified in exceptional circumstances.

4. The Bill mainly seeks to achieve the aforesaid objects.

NEW DELHI;
Dated the 16th November, 1973.

JAGJIVAN RAM.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 18 of the Bill seeks to amend sub-section (2) of section 184 of the Navy Act, 1957, so as to enable the Central Government to make regulations to provide for the cases in which and the conditions subject to which powers of punishment may be exercised under sub-section (2) of section 7 of the Act, and the authority to which any matter referred to in the proposed new section 19A of the Act may be referred and the manner in which an enquiry may be made by that authority. These are matters of procedure and detail. The delegation of legislative power is, therefore, of a normal character.

B. N. BANERJEE.
Secretary-General.

PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 1973